

1 THE HONORABLE BENJAMIN H. SETTLE
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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT TACOMA

10 EMILY TORJUSEN,)
11 v.) Plaintiff,) No. 3:18-cv-05785-BHS
12 NATIONAL RAILROAD PASSENGER) PLAINTIFF'S TRIAL BRIEF
13 CORPORATION d/b/a AMTRAK,)
14 Defendant.)
15

16 **INTRODUCTION**

17 Plaintiff Emily Torjusen respectfully submits this trial brief to address the basic factual,
18 legal, and evidentiary issues presented by this case. This case arises out of the Amtrak Cascades
19 Train 501 derailment on December 18, 2017 near DuPont, Washington. Plaintiff brings a cause
20 of action for common law negligence against National Railroad Passenger Corporation d/b/a
21 Amtrak ("Amtrak"). Amtrak admits that it is liable for compensatory damages proximately
22 caused by the derailment but disputes the nature and extent of Ms. Torjusen's injuries.

23 **FACTUAL BACKGROUND**

24 On December 18, 2017, Emily Torjusen was a 24-year-old woman traveling as a
25 passenger on Amtrak Cascades Train 501 from Seattle to Vancouver, Washington. She was
26 traveling home to spend the holidays with her family.

27 At approximately 7:30 a.m. on that day, Ms. Torjusen was riding in the seventh car,
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1 numbered AMTK 7504, on the Amtrak Train 501 as it traveled south towards Oregon. At that
 2 time, the train was traveling on the Point Defiance Bypass section of the Lakewood Subdivision,
 3 on a descending grade, approaching the curve at milepost 19.8 that crosses over Interstate 5 from
 4 east to west. The curve located at milepost 19.8 had a permanent speed restriction of 30 miles
 5 per hour, but Train 501 was traveling at 78 miles per hour as it approached the curve, and never
 6 slowed. Due to this excessive speed, the lead locomotive and the passenger cars, including
 7 AMTK 7504 on which Plaintiff was riding, was caused to jump the track and derail. AMTK 7504
 8 came to rest on its side. As a result, Ms. Torjusen sustained serious and permanent injuries and
 9 damages, including a mild traumatic brain injury which significantly interferes with her function
 10 and abilities, PTSD, and other physical injuries that have required treatment and that have caused
 11 her pain and suffering and limitations.

12 At the time of the derailment, Ms. Torjusen was looking at her phone. She looked up and
 13 felt the whole car shaking. Ms. Torjusen remembers metal coming toward her and then she was
 14 knocked unconscious. When she woke up, it was pitch back and she heard people crying and
 15 screaming. Ms. Torjusen was stuck in the dirt and could not move her legs. A man named Kevin,
 16 who had been taking photos of the train as it went on its inaugural run, came to Ms. Torjusen's
 17 assistance.

18 Ms. Torjusen was transported by ambulance to Providence St. Peter Hospital in Olympia,
 19 Washington. Ms. Torjusen has been diagnosed with a closed head injury, post-concussive
 20 symptoms, scalp laceration, pulmonary contusion, right clavicular fracture, post-traumatic stress
 21 disorder, and generalized anxiety disorder. All of these damages are causally linked to the crash.

22 Prior to the train wreck, Ms. Torjusen was a healthy 20-year-old woman with no pre-
 23 existing medical or psychological conditions connected to her complained of injuries and
 24 damages. At the time of the derailment, Ms. Torjusen was enrolled as an undergraduate at the
 25 University of Washington.

26 **LEGAL AND EVIDENTIARY ISSUES**

27 Amtrak has admitted liability for the incident. Plaintiff will introduce background facts

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1 and exhibits that are relevant to damages to show the force of impact, the damage to the passenger
 2 car, and other matters relevant to Plaintiff's damage claims. This limited evidence related to
 3 liability is admissible, as it is relevant to the question of damages. *Snyder v. Gen. Elec. Co.*, 47
 4 Wash. 2d 60, 67-68, 287 P.2d 108, 112-13 (1955); *Smelko v. Brinton*, 241 Kan. 763, 768, 740
 5 P.2d 591, 595 (1987) ("Although plaintiffs were relieved of establishing liability, we think the
 6 better rule is to permit a plaintiff to introduce reasonable evidence to show how the injury was
 7 sustained."); *Jones v. Carvell*, 641 P.2d 105, 112 (Utah 1982) (evidence going *only* to liability is
 8 excluded in admitted liability claim) (emphasis added). In *Snyder*, an admitted liability case for
 9 an injury to a passenger in a bus accident, the court allowed evidence of, among other things,
 10 where the plaintiff was seated, the speed of the bus and the force of the impact, so that the jury
 11 could properly assess the plaintiff's damages. Plaintiff intends to introduce similar such evidence
 12 as it is highly relevant to the nature and extent of Plaintiff's injuries and damages.

13 A. Non-Economic Damages

14 Plaintiff will present evidence through her mental healthcare providers and through an
 15 eyewitness, family and a friend regarding the extensive non-economic damages she has sustained
 16 in this incident. Prior to the derailment, Ms. Torjusen was a healthy 20-year-old woman. Her life
 17 has been permanently altered as a result of the derailment and her brain injury. She has suffered
 18 pain and suffering, both mental and physical, as a result of the train wreck and with reasonable
 19 probability will continue to suffer in future. Plaintiff will be diligent to avoid unnecessarily
 20 cumulative testimony in this regard. However, Plaintiff submits she should be granted leeway to
 21 fully explore and prove the full nature and extent of her damages.

22 The mental healthcare providers Plaintiff intends to call all treated Ms. Torjusen at
 23 different times and/or provided different treatments in different specialties. The fact witnesses
 24 Plaintiff intends to call know Ms. Torjusen from various perspectives and aspects of her life, and
 25 therefore offer unique insight into the changes and limitations they have observed in Ms.
 26 Torjusen as a result of her brain injury. Plaintiff has the burden of proof on damages and therefore
 27 should be allowed to briefly call a variety of witnesses to provide a thorough and comprehensive

picture of her extensive general damages and the impacts she has suffered across various aspects of her life from Amtrak's admitted negligence.

B. Economic Damages

Ms. Torjusen seeks to recover the reasonable value of necessary medical care, treatment, and services that with reasonable probability will be required in the future. Plaintiff expects to call Ms. Torjusen's mental healthcare providers to testify regarding Ms. Torjusen's future medical care needs as well as the reasonable value of such care. Ms. Torjusen does not intend to make any claims for past medical expenses, past lost wages, or past out-of-pocket expenses related to care and treatment.

V. CONCLUSION

Plaintiff Emily Torjusen looks forward to presenting her case when it is set to commence on March 29, 2022.

Respectfully submitted this 3rd day of March 2022.

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CERTIFICATE OF SERVICE

I hereby certify that on the date indicated below, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all attorneys and parties of record.

Executed this March 3rd, 2022, at Oakland, California.

Pursuant to FRCP 5(b), I certify that I am an employee of Hildebrand, McLeod & Nelson, LLP, who are members of the bar of this court and at whose direction this service was made.

Fremdt

Elena Jimenez